

REMARKS & ARGUMENTS

The Applicant provides the following remarks and argument for consideration in further examination of the present application and explanation of the amendments presented herein. Reconsideration of the rejection of the pending claims in view of these remarks and argument is requested.

Claim Amendments

No claims amendments have been made.

Claim Rejections – 35 U.S.C. § 101

In the final Office Action, claims 1-51 stand rejected under 35 U.S.C. § 101 as being directed to non-statutory subject matter. All rejections are respectfully traversed.

At page 3 of the final Office Action, the Office alleges that claims 1-51 “recite the mere manipulation of data or an abstract idea, or merely solve a mathematical problem without a limitation to a practical application.” Specifically, the Office states that “the claims merely samples pixels in first region, samples pixels in second region, and edit based on first and second distributions. Claims do not provide any result from the editing.” Applicant disagrees and reiterates that, as discussed fully in the Response filed 2 January 2008, the claims as presented herein are directed to statutory subject matter and fully meet the requirements of 35 U.S.C. § 101. The claims need not recite a result from the editing.

The *Guidelines for Examination of Patent Applications for Subject Matter Eligibility* (22 November 2005) (the “Guidelines”; now collected at M.P.E.P. § 2106) require only that “a useful tangible, and concrete result is **produced**.” Guidelines at IV(C)(2)(ii) (emphasis added). Despite the Examiner’s suggestion that one or more subsequent steps regarding the result should be recited in the claim, **there is no requirement that a result be explicitly recited in the claims**. The Guidelines merely require that an abstract idea be “reduced to some practical application rendering it ‘useful.’” *AT&T Corp. v. Excel Communications, Inc.*, 172 F.3d 1352, 1356-57 (Fed. Cir. 1999). Thus, the “useful” result may be implicit from the claims. “Because Section 101 includes processes as a category of patentable subject matter, the judicially-defined proscription against patenting of a “mathematical algorithm,” to the extent such a proscription still exists, is narrowly limited to mathematical algorithms **in the abstract**.” *AT&T*, 172 F.3d at 1356 (emphasis added). As the present pending claims result in a physical transformation (described at page 12 of the Response filed 2 January 2008) and produce a useful, tangible, and

concrete result (described at pages 12-16 of the Response filed 2 January 2008), the claims are clearly not directed to a mathematical algorithm in the abstract.

Indeed, the Court in *Arrhythmia Research Technology Inc. v. Corazonix Corp.*, stated “In answering the question ‘What did the applicant invent?’, the [claimed] method is properly viewed as a method of analyzing electrocardiograph signals in order to determine a specified heart activity That the product is numerical is not a criterion of whether the claim is directed to statutory subject matter.” 958 F.2d 1053, 1059-60 (Fed. Cir. 1992). *See also* Response filed 2 January 2008 at pages 13-15. Applicant respectfully submits that transforming input data in the form of electrocardiograph signals of a patient to determine a heart activity is no different than transforming data relating to pixel distributions to determine a pixel editing operation. Thus, Applicants respectfully submit that the present pending claims meet the requirements of the Guidelines and the law.

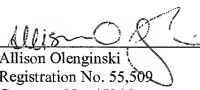
At page 4 of the final Office Action, the Examiner advised the Applicant “to provide a written explanation of how and why the claimed invention (either as currently recited or as amended) produces a useful concrete and tangible result.” Applicant respectfully refers the Examiner to the Response filed 2 January 2008, specifically at pages 12-16, which explain in detail how the present claims present a useful, tangible, and concrete result. Applicant reiterates that the “result” produced by the pending claims of the instant application is an edited digital image. The editing of digital images is useful for a plethora of reasons such as the production of print advertisements, magazines, newspapers, photographs, and the like. The editing of a digital image results in the alteration of the image, which is tangible. The result produced by the claims is reproducible and, thus, concrete.

Accordingly, Applicant respectfully submits that claims 1, 26, and 51, and those claims depending directly or indirectly therefrom, are directed to statutory subject matter. Withdrawal of the rejection of claims 1-51 under 35 U.S.C. §101 and allowance of the claims is respectfully requested.

Conclusion

Applicant has addressed each of the issues raised in the final Office Action through argument. Applicant believes all claims in the application are thus presently allowable, requests reconsideration of all previously rejected claims, and requests that a notice of allowability be issued in due course.

Respectfully submitted this 16 day of June 2008.



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